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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,096	10/31/2003	Philip W. Wyers	2000	2637

24264 7590 12/03/2004

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LAKEWOOD, CO 80226

EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/03/2004


Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,096

Applicant(s)

WYERS, PHILIP W. 

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Wade et al. 4,918,857 and Winnicki 4,733,495 or Jolly 1,308,497.

In regard to claims 1 and 7, Fahringer discloses providing an elongated housing (16, 18, 19); evacuating air from the housing to establish a potential vacuum source (via 12); placing the upstream end (19) adjacent a target insect; while maintaining the effective length of the housing, creating air pressure (via 12 and after 28 is actuated) within the upstream end portion of the housing that is less than ambient pressure at the upstream end whereby air is drawn into the housing interior at a sufficient flow to draw the insect into the upstream region and be trapped therein (at 19, 20), but does not disclose providing a movable closure at an upstream end portion of the housing. Wade et al. discloses a pest collection and disposal device having a housing (32) with a moveable closure (26) at an intermediate extent of the housing and a partition (37) and wherein there is a pressure adhesive (40) which contains an insecticide over at least part of the inside surface of the tube (32) between the screen (37) and flap (26) for

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restraining entrapped insects. It would have been obvious to a person of ordinary skill in the art to employ the moveable closure of Wade et al. in the device of Fahringer in order to provide a physical barrier in the airstream which will prevent the escape of insects from the housing. Fahringer and Wade et al. do not disclose the moveable closure which is disposed on an upstream end portion of the housing. Winnicki and Jolly disclose the moveable closure (86 on upstream end portion 80 of Winnicki; 5h on upstream end portion 5 of Jolly) which is disposed on an upstream end portion of the housing. It would have been obvious to a person of ordinary skill in the art to modify the device of Fahringer and Wade et al. by placing the moveable closure member on the upstream end portion in view of Winnicki or Jolly in order to assuredly retain insects sucked into the housing immediately after their entry into the housing.

In regard to claims 5 and 11, Fahringer discloses mechanically maintaining the compression chamber in the compressed position (via valve 30 being in closed position; no particular structural configuration is being recited).

3. Claims 1-7, 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahringer 4,817,330 in view of Winnicki 4,733,495 or Jolly 1,308,497.

Fahringer does not disclose a moveable closure disposed on an upstream end portion of the housing. Winnicki and Jolly disclose the moveable closure (86 on free end portion 80 of Winnicki; 5h on upstream end portion 5 of Jolly) which is disposed on an upstream end portion of the housing. It would have been obvious to a person of ordinary skill in the art to modify the device of Fahringer and Wade et al. by placing the moveable closure member on the upstream end portion in view of Winnicki or Jolly in

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order to assuredly retain insects sucked into the housing immediately after their entry into the housing.

Response to Arguments

4. Applicant's arguments with respect to claims 1-7 and 9-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA